

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1702

IN THE

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

ELENA CLASS, et al
Plaintiffs, Appellees

v.

NICHOLAS NORTON, et al
Defendants, Appellants

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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RELEVANT CIVIL DOCKET ENTRIES

Class v. Norton

HONORABLE M. JOSEPH BLUMENFELD

United States District Court

12-6-1971

Complaint, Motion for Preliminary Injunction, Motion to Proceed in Forma Pauperis and Order endorsed, thereon as follows: "Motion granted on basis of affidavits appended to complaint. Dec. 2, 1971" Blumenfeld, J., filed and entered.

12-29-1972

Answer, filed in Hartford.

6-6-1972

Memorandum for the United States as Amicus Curiae, filed in Hartford.

6-16-1972

Memorandum of Decision, Findings of Fact and Conclusions of Law entered. The court finds that the defendants are not in compliance with section 206.10(a)(3), *supra*, because they have not made determinations of eligibility within the required 30-day period. Lax administration provides no justification for this delay in determining eligibility. The defendants are thus ordered to comply with section 206.10(a)(3), on penalty of the withdrawal of federal funds for the AFDC program in Connecticut. Where the delay is not permissible under the regulation, applicants will be presumed eligible and assistance checks mailed accordingly, within the 30-day period. On penalty of withholding federal funds, the defendants are enjoined from enforcing those provisions of Manual section 370.2 which provide for different effective dates of assistance for recipients whose eligibility is determined in a month subsequent to the month of application, or

more than 30 days after the date of application. The defendants are ordered to make assistance effective from a date no later than the date of application for all AFDC recipients, whatever the date of determination of eligibility. Cf. *Ewing v. Gardner*, 185 F. 2d 781 (6th Cir. 1950) (Social Security benefits to run from date of application); *contra*, *Jordan v. Swank*, CCH Pov. L. Rep. par. 14,266 (N.D. Ill. 1972). Blumenfeld, J. Copies to all counsel. M-6-21-72.

6-22-1972

Addendum to Memorandum of Decision and Order, entered. The defendant White is further ordered to submit bi-monthly reports of the number of applications which have been pending for more than 30 days from the entering of judgment in this case until July 1, 1973. Finally, AFDC benefits retroactive to the date of application are ordered to be paid to all recipients whose applications have been approved since the filing of this suit, only to the extent that emergency town welfare benefits received by these recipients were less than the AFDC payments. Since many AFDC recipients are granted town welfare benefits pending the determination of eligibility under the state program, these recipients are not entitled to the windfall of double payments for any period. SO ORDERED. Blumenfeld, J. M-6-22-72. Copies to all counsel. (*pending AFDC applications including the number of).

6-29-1972

Judgment entered in accordance with Memorandum of Decision and Addendum thereto. Earl, C. Approved: Blumenfeld, J. M-6-29-1972. Copies mailed to all counsel.

3-16-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

4-5-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

5-11-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

7-19-1973

Bi-monthly report on AFDC cases pending over 30 days filed by the State of Connecticut.

9-4-1973

Motion for Relief from Judgment, Notice of Motion and Memorandum of Law in Support of Motion, filed by defendant.

9-11-1973

Hearing on Defendant's Motion for Relief from Judgment. Copy of new HEW Regulations, filed by Defendant. Decision Reserved. Blumenfeld, J. M-9-13-1973.

1-4-1974

Motion for Contempt and Other Relief, filed by plaintiffs at Hartford.

3-22-1974

Ruling on Plaintiffs' Motion for Contempt and Other Relief, entered. Defendants ordered to take certain steps, within 15 days of the date of this order, to properly implement the prior orders of this Court, etc. In addition the defendant Commissioner shall submit monthly reports to this Court, with copies to counsel for the plaintiffs, detailing the processing of AFDC applications. The Court finds that the value of the time necessarily expended by the attorneys for the plaintiffs is in excess of \$1,000. Accordingly, within 15 days from the date of this order, the defendant Norton shall, as Commissioner of Welfare and in his individual capacity, pay costs and at-

torneys' fees for the prosecution of this motion in the amount of \$1,000 to Fairfield County Legal Services, Inc., plaintiffs' attorneys, such amount to be divided equally between the two legal services programs. SO ORDERED. BLUMENFELD, J. M-3-25-74. Copies mailed from Hartford.

4-3-74

Notice of Appeal from Ruling on Plaintiffs' Motion for Contempt and Other Relief, filed by Defendant. Copies mailed.

4-4-1974

Application for Partial Stay Order, Notice of Hearing and Memorandum in Support of Application, filed by Defendant, at Hartford.

4-5-1974

Hearing on Application for Partial Stay of Order of 3-22-74 continued. Court will consider an application for enlargement of time to pay costs of attorneys' fees — when requested by Def. Blumenfeld, J. M-4-8-74.

4-9-1974

Motion for Enlargement of Time in Which to Comply with the Orders entered in the Court's Ruling on Plaintiffs' Motion for Contempt and Other Relief, Dated March 22, 1974 and Notice of Hearing, filed at Hartford. Order entered that as to that portion of the Judgment and Order of the Court dated March 22, 1974, which requires the defendant to pay \$1,000 attorneys' fees and costs to plaintiff within 15 days of the date of said order, the time for compliance is extended to May 6, 1974. Blumenfeld, J. M-4-10-1974. Copies mailed.

4-29-1974

Hearing on Defendant's Motion for Partial Stay Order. Plaintiff's Brief in Opposition to Defendant's Application for Partial Stay Order, filed. 1 Defendant's witness (Anthony

DiNallo) sworn and testified. Decision Reserved. Blumenfeld, J. M-4-30-1974.

5-3-1974

Order entered extending the time for compliance by defendant of \$1,000 attorneys' fees and costs to plaintiff, from May 6, 1974 to May 13, 1974. Blumenfeld, J. Copies mailed from Hartford. M-5-7-1974.

5-7-1974

Motion to Extend Time for 'Transmitting Record to the Court of Appeals, to and including May 27, 1974, filed by Defendant. Order entered thereon granting same. Blumenfeld, J. Copies mailed from Hartford. M-5-15-74.

5-13-1974

Ruling on Defendant Norton's Motion for Relief from Judgment and Application for Partial Stay Order, entered. The Motion for Relief from Judgment and the Application for Partial Stay Order are denied. The Motion for Relief from Judgment is denied without prejudice and the Defendant may renew the motion when he can show himself and his Department to be in compliance with this Court's prior orders. So Ordered. Blumenfeld, J. M-5-14-74. Copies given to ATTYS. Walsh, Katz & Sturdevant by Hartford Office. Copies mailed to other counsel.

*5-2-1974

Motion for Enlargement of Time in Which to Comply with the Orders entered in the Courts ruling on Plaintiff's Motion for Contempt and Other Relief, dated 3-22-74 and Notice of Motion, filed by defendant at Hartford.

6-7-1974

Notice of Appeal from Ruling on defendant Norton's Motion for Relief from Judgment and Application for Partial Stay

Order entered 5-13-74, filed by defendant. Copies mailed to all counsel and to clerk, U.S.C.A.

7-19-1974

Letter from Nicholas Norton, Commissioner, continuing compliance with Court Order to review all active and inactive AFDC cases granted between Dec. 1, 1971, and June 1, 1972, filed.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

**COMPLAINT FOR DECLARATORY JUDGMENT,
EQUITABLE AND OTHER APPROPRIATE RELIEF**

CIVIL ACTION NO. 14764

ELENA CLASS, individually and on behalf of her minor grandchildren, CARMEN DEIDA and JOSE DEIDA; CAROLINE COOMBS, individually and on behalf of her minor children, ROXANN MARY COOMBS and KIMBERLY ANN COOMBS; and MARVA SCOTT, individually and on behalf of her minor children, DENISE SCOTT, SANDRA SCOTT, MARVA SCOTT, JOSEPH SCOTT, LISA SCOTT and JIMMI SCOTT, and grandchild, LORI BROWN, *Plaintiffs*

v.

HENRY C. WHITE, individually and as Commissioner of the State Welfare Department; and THERESA CONNELL, individually and as Acting District Director, District Office No. 3, *Defendants*

I. STATEMENT AS TO JURISDICTION

1. This is a civil action brought by plaintiffs individually and on behalf of their minor children and grandchildren, and on behalf of all others similarly situated, for declaratory relief and a preliminary and permanent injunction against delays in processing State Welfare AFDC applications, and requiring that applicants for State Welfare AFDC benefits, either receive notice of ineligibility or their first assistance check within thirty (30) days of their application to the Connecticut State Welfare Department.

2. Jurisdiction is conferred upon this Court by Title 28 U.S.C. § 1343 (3) and (4).

3. Plaintiffs' action for injunctive and declaratory relief is brought pursuant to Title 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, to redress the deprivation under color of law of rights, privileges and immunities secured by 42 U.S.C. §§ 601-609 and administrative regulations issued pursuant thereto and by the Constitution of the United States, Article VI, Clause 2 and the Equal Protection Clause of the Fourteenth Amendment.

4. Plaintiffs bring this class action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23 (a) and (b) (2), Federal Rules of Civil Procedure. The class is composed of all needy mothers, supervising relatives and dependent children of the State of Connecticut who are eligible for assistance under the Aid to Families with Dependent Children program (hereinafter referred to as *AFDC*) but are forced by defendants and their agents to wait longer than thirty (30) days after application for a determination of eligibility and receipt of their first assistance check. This class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class; in addition, defendants and their agents have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

5a. Plaintiff Elena Class, is a resident of the City of Bridgeport, County of Fairfield, and is the grandmother and supervising relative of the Plaintiff minor children, Carmen Deida, age eight (8) years and Jose Deida, age seven (7) years.

5b. Plaintiff Caroline Coombs, is a resident of the City of Bridgeport, County of Fairfield, and is the mother of the

Plaintiff minor children, Roxann Mary Coombs, age three (3) years and Kimberly Ann Coombs, age one (1) year.

5c. Plaintiff Marva Scott, is a resident of the City of Bridgeport, County of Fairfield, and is the mother of Plaintiff minor children, Denise Scott, age sixteen (16) years; Sandra Scott, age fifteen (15) years. Marva Scott, age thirteen (13) years; Joseph Scott, age ten (10) years; Lisa Scott, age nine (9) years and Jimmi Scott, age six (6) years; and the grandmother of Plaintiff minor child, Lori Brown, age six (6) months.

5d. The Plaintiffs' affidavits, attached to the complaint as *Exhibit A* and hereby incorporated by reference as if they were fully pleaded herein, detail their individual factual situations and the effects of the Defendants' actions upon them.

6a. Defendant Henry C. White, is the Commissioner of the Connecticut State Welfare Department (hereinafter referred to as *State Welfare Department*) and is sued herein in that capacity. He is charged with state-wide administration of the public assistance program and with establishing regulations to carry out the statutory provisions of that program.

6b. Defendant Theresa Connell, is the Director of District Office No. 3, an agency of the State Welfare Department, and is sued herein in that capacity. She is responsible for administering the public assistance program in District No. 3.

II. FACTUAL ALLEGATIONS

7. Plaintiff Class applied for AFDC benefits on September 2, 1971, at the Bridgeport Office, District Office No. 3, State Welfare Department.

8. Plaintiff Class, is and was on September 2, 1971, eligible for AFDC benefits as supervising relative of her grandchild.

dren, Carmen Deida and Jose Deida. The said grandchildren were abandoned by their natural parents and plaintiff Class was appointed as their legal guardian in a legal proceeding in Puerto Rico prior to February, 1970. Neither plaintiff Class, whose husband's whereabouts are unknown, nor her grandchildren have any independent means of support or assets.

9. More than thirty (30) days have elapsed since plaintiff Class' application. To date she has not received her first State Welfare check, nor has she been informed that she and her plaintiff grandchildren are eligible for AFDC benefits.

10. Plaintiff Coombs applied for AFDC benefits on June 29, 1971, at the Bridgeport Office, District Office No. 3, State Welfare Department.

11. Plaintiff Coombs is, and was on June 29, 1971, eligible for AFDC benefits as mother of her children, Roxann Mary Coombs and Kimberly Ann Coombs. Neither plaintiff Coombs, who is separated from her husband, nor her children, have any independent means of support or assets.

12. More than thirty (30) days have elapsed since plaintiff Coombs' application. To date she has not received her first State Welfare check, nor has she been informed that she and her plaintiff children are ineligible for AFDC benefits.

13. Plaintiff Scott applied for AFDC benefits on August 4, 1971, at the Bridgeport Office, District Office No. 3, State Welfare Department.

14. Plaintiff Scott is, and was on August 4, 1971, eligible for AFDC benefits as mother of her children, Denise Scott, Sandra Scott, Marva Scott, Joseph Scott, Lisa Scott, and Jimmie Scott; and as supervising relative of her grandchild, Lori Brown. Neither plaintiff Scott, whose husband is incarcerated in state prison in New Jersey, nor her children have any independent means of support or assets.

15. Although plaintiffs Class, Coombs and Scott and their children and grandchildren have been receiving emergency relief in the form of assistance from the City of Bridgeport Office of Humane Affairs, Department of Public Welfare (hereinafter referred to as *City Welfare*), said assistance is inadequate to maintain minimum standards of need as detailed in the plaintiffs' affidavit.

16. Further, the defendants' failure to determine eligibility of plaintiffs and issue payments within thirty (30) days, has deprived plaintiffs and their children and grandchildren of monthly benefits ranging from \$5.11 to \$43.99 for special non-recurring needs that they would receive pursuant to paragraph 364, *Non-Recurrent Expenses*, Vol I, Chapter III, Connecticut State Welfare Department, Social Services Policies Manual (hereinafter referred to as *Policy Manual*), for non-recurring needs (see *Exhibit B*). City Welfare does not provide this monthly allowance for non-recurring needs, nor does the State Welfare Department pay such allowance retroactively prior to the month in which eligibility is established.

17. As a condition for receiving federal funds for its AFDC program, the State of Connecticut is required by the provisions of 42 U.S.C. §§ 601-609 to have formulated a state plan of AFDC consistent with the federal laws and regulations issued pursuant thereto.

18. At all times relevant herein, the regulations of the Department of Health, Education and Welfare, 45 C.F.R. § 206.10 (a) (3) have required that a state plan for AFDC provide for prompt decisions on applications. In AFDC cases, either the first assistance check or the notification of denial of assistance must be mailed to the applicant within thirty (30) days from the date of application (referred to hereinafter as the "*thirty-day requirement*", and attached to the Complaint as *Exhibit C* and hereby incorporated by reference as if it were fully pleaded herein).

19. Connecticut statutes and welfare regulations and practices violate the "thirty-day requirement" in that:

a. At all times relevant herein, portions of §§ 17-82b and 17-82d of the Connecticut General Statutes, have provided that applications for assistance from the State Welfare Department shall be made to a local officer, forwarded to the Commissioner of the Department and "acted upon" by the Commissioner within sixty days after filing.

b. If the Commissioner does not act upon the application within sixty (60) days, the applicant may request a fair hearing pursuant to §§ 17-2a and 17-2b of the Connecticut General Statutes; the fair hearing is to be held within thirty (30) days from the time the Commissioner receives the request, and after the hearing, a decision is to be rendered within another thirty (30) days. In all, as much as one-hundred and twenty (120) days may pass from the time of application to the rendering of a decision on the applicant's eligibility with no requirement that a check must be received if the decision is for eligibility.

c. Welfare regulations in paragraphs 370 et seq. of Vol. I, Chapter III, of the State Welfare Department's Policies Manual, (the full text of which is attached to the Complaint as *Exhibit D* and is hereby incorporated by reference as if fully pleaded herein) provide only instructions as to dates to which payments are to be made retroactively, with no provisions as to when the applicant must receive either the initial award check or notice of denial of assistance.

d. The "thirty-day requirement" is further violated by the State Welfare Department in that, upon information and belief, the majority of eligible AFDC applicants do not receive either their initial award check or notice of denial of assistance within thirty (30) days from the date of application.

20. The State Welfare Department's Policies Manual, Vol. I, Chapter III, paragraphs 370 et seq., creates classes of applicants who receive their payments effective from differing dates, and hence receive differing amounts, depending upon the speed with which their applications are processed:

a. In cases where eligibility is established during the same month in which the application was received, the initial award payment is to be effective from, and retroactive to, the date of application.

b. In cases where eligibility is established in a calendar month subsequent to the month of application, the initial award payment shall be effective from, and retroactive to the first of the calendar month in which eligibility is established.

c. In cases where the application has been pending more than thirty (30) days, the initial award payment shall be effective from, and retroactive to the thirty-first day from the date of application.

21. Upon information and belief, applicants similarly situated to plaintiff Marva Scott, applied for AFDC benefits on or about August 4, 1971, and were determined eligible within said month and began receiving assistance effective from August 4, 1971.

22. Upon information and belief, applicants similarly situated to plaintiff Marva Scott, applied for AFDC assistance on or about August 4, 1971, and were determined eligible in September, 1971, but before September 3, 1971, and began receiving assistance effective September 1, 1971.

23. Upon information and belief, applicants similarly situated to plaintiff Marva Scott, applied for AFDC assistance on or about August 4, 1971, and were determined eligible in October, 1971, and began receiving assistance effective September 4, 1971.

24. By delaying determination of eligibility beyond thirty (30) days and failing to pay benefits retroactively to the date of application, the State Welfare Department lessens its expenditures to eligible applicants for basic subsistence payments. In addition to this savings, the State Welfare Department's policy of not paying the monthly allowance for special non-recurring needs retroactively, allows a savings of between \$5.11 and \$43.99 per month per applicant for each month that the determination of eligibility is delayed. The Connecticut statutes referred to above in paragraphs 19 a and b, and the Welfare Department's regulations referred to above in paragraph 19 c, create incentive for the State Welfare Department to delay applications.

III. CAUSES OF ACTION

FIRST COUNT

25. Defendants and their agents, acting under color of §§ 17-82b and 17-82d of the Connecticut General Statutes, and paragraphs 370 et seq. of Vol. I, Chapter III, State Welfare Department, Social Services Policies Manual, have unlawfully deprived plaintiffs Elena Class, Caroline Coombs and Marva Scott, their families and the other members of their class, of AFDC benefits and their rights under 42 U.S.C. §§ 601-609 by failing to pay AFDC benefits within thirty (30) days from the date of application as required by regulations promulgated by the Department of Health, Education and Welfare.

SECOND COUNT

26. Connecticut State Welfare Department regulation, paragraph 370.2, Vol. I, Chapter III, of the State Welfare Department's Social Services Policies Manual, creates wholly arbitrary and invidious classifications between similarly situated, equally needy applicants, without any rational or compelling state interest. This regulation is invalid and un-

constitutional on its face and as applied to the plaintiffs, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in that, applicants similarly situated who apply on the same date and are eligible on that date, begin receiving AFDC benefits on different dates of different months and for different periods, depending upon the date of the authorization of assistance as determined by the speed of the administrative process.

27. The Connecticut State Welfare Department's policy of not paying the monthly allowance for non-recurring needs retroactively creates wholly arbitrary and invidious classifications between similarly situated, equally needy applicants without any rational or compelling state interest. This policy is invalid and unconstitutional as applied to the plaintiffs in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in that, applicants similarly situated who apply on the same date and are eligible on that date begin receiving this allowance for non-recurring needs on different dates of different months and for different periods, depending upon the date of authorization of assistance as determined by the speed of the administrative process.

IV OTHER ALLEGATIONS

28. This suit involves a genuine case or controversy between the plaintiffs and the defendants.

29. The plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

V. PRAYERS FOR RELIEF

The plaintiffs pray that this court:

30. Assume jurisdiction of these claims and set this case down for prompt hearing.

31. Certify pursuant to Rule 23 F.R.C.P. that this suit may proceed as a class action.

32. Declare that the defendants and their agents have the mandatory obligation pursuant to 45 C.F.R. 206.10 (a) (3), the "thirty-day regulation", promulgated by the Department of Health, Education and Welfare to cause to be sent to plaintiffs and other persons similarly situated, AFDC initial award checks within thirty (30) days from the date of application.

33. Declare that § 17-82d of the Connecticut General Statutes is void and in violation of Article VI of the United States Constitution, insofar as it permits the State Welfare Department to avoid for a period exceeding thirty (30) days from the date of application, either notifying an applicant of ineligibility or sending the initial award check.

34. Declare that paragraphs 370 et seq. of Vol I, Chapter III, of the State Welfare Department, Social Services Policies Manual, are void and in violation of Article VI of the United States Constitution, insofar as they permit the State Welfare Department to avoid, for a period exceeding thirty (30) days from the date of application, either notifying an applicant of ineligibility or sending the initial award check.

35. Declare that paragraph 370.2 of Vol I, Chapter III of the State Welfare Department, Social Services Policies Manual, is invalid and unconstitutional on its face and as applied to plaintiffs, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

36. Declare that the State Welfare Department's policy of not paying the monthly allowance for non-recurring needs retroactively to the date of application is invalid and unconstitutional as applied to the plaintiffs, in violation of the Equal

Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

37. Enter a preliminary and permanent injunction directing the defendants and their agents to cause to be sent to plaintiffs and others persons similarly situated, AFDC initial award checks within thirty (30) days from the date of application.

38. Enter a preliminary and permanent injunction directing the defendants and their agents to issue AFDC benefits, including the monthly allowance for non-recurring needs, retroactively to the date of application for all applicants found eligible.

39. Grant such additional relief as the Court may deem just and appropriate.

November 30, 1971

THE PLAINTIFFS

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06608
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By: JAMES B. MASON
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Their Attorneys

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et als., *Plaintiffs*,

v.

HENRY C. WHITE, et al., *Defendants*.

ANSWER

1.) Paragraphs 2, 19, 19a, 19b, 19c, 19d, 24, 25, 26, 27, 28, 29 are denied.

2.) Paragraphs 1, 6a, 7, 9, 10, 17, 18, 20, 20a, 20b, 20c, are admitted.

3.) Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5a, 5b, 5c, 5d, 8, 14, 16, 21, 22 and 23.

4.) Paragraph 3 is denied insofar as it alleges that the defendants are acting to deprive plaintiffs of their rights, under color of law, or otherwise.

5.) Insofar as paragraph 6b alleges that the defendant, Theresa Connell is the *acting* director of district office #3, it is admitted.

6.) The allegations contained in paragraph 11 are denied excepting insofar as they allege that plaintiff Coombs applied for AFDC benefits for herself and one minor child, Kimberly Ann Coombs, on June 28, 1971.

7.) Paragraph 12 is denied. Plaintiff Coombs' application was denied and she was so notified on or about November 23, 1971.

8.) Paragraph 13 is denied. Plaintiff Scott applied for benefits on September 13, 1971.

9.) The allegations of Paragraph 15 are denied insofar as they allege that the assistance which plaintiffs are or were receiving from the City of Bridgeport is or was inadequate to maintain minimum standards of need.

FIRST DEFENSE

The Secretary of Health, Education and Welfare is an indispensable party to this action under Rule 19(a), since the relief requested in paragraph 38 of the complaint, if granted, would, in effect, modify H.E.W. regulation 45 C.F.R. 206.10(a) (6) (i).

DEFENDANTS,

ROBERT K. KILLIAN
Attorney General

By: EDMUND C. WALSH
Assistant Attorney General

I hereby certify that on the 29th day of December 1971, I served a copy hereof by depositing it in the mails to the following:

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al

v.

HENRY C. WHITE, COMMISSIONER of Welfare,
State of Connecticut, et al

**MEMORANDUM OF DECISION
FINDINGS OF FACT and
CONCLUSIONS OF LAW**

In this case the plaintiffs challenge regulations and practices of the defendant, the Connecticut Commissioner of Welfare,¹ with respect to the determination of eligibility for welfare assistance under the state program of Aid to Families with Dependent Children (AFDC), as violative of valid regulations of the Department of Health, Education and Welfare (HEW) and of the equal protection clause of the fourteenth amendment of the United States Constitution. A cause of action is thereby stated under 42 U.S.C. § 1983 and jurisdiction is provided by 28 U.S.C. § 1343(3).

The plaintiffs sue on behalf of themselves and all other needy mothers, supervising relatives and dependent children in Connecticut who have applied for AFDC assistance but whose applications have not been processed for more than 30 days after the date of application. The court finds that this class satisfies the requirements of Fed., R.Civ.P. 23(a) and (b) (2).

¹Although the complaint also names a district director of welfare as a defendant, the state regulations are promulgated solely under the authority of the defendant White.

The plaintiffs challenge two aspects of the AFDC program in Connecticut. First, they challenge the practice of the defendants of delaying in a substantial number of cases the determination of eligibility for more than 30 days after the date of application, through no fault of the applicant, as violative of 45 C.F.R. § 206.10. Second, they challenge the classifications promulgated by the defendant White, to govern the date from which assistance is granted, in cases where the determination of eligibility is made more than 30 days after the date of application, Connecticut State Welfare Manual, Vol. 1 (hereinafter Manual) §370.2, as violative of HEW regulations, 45 C.F.R. § 205.120, 205.130, 233.10, 233.20, and of the equal protection clause of the fourteenth amendment. At the invitation of the court, HEW entered this case as *amicus curiae* and filed a brief setting forth its position with respect to the claims under HEW regulations. The claims will be considered separately.

I. DELAYED DETERMINATION

Title 45 C.F.R. § 206.10(a) (3) provides:

"A decision will be made promptly on application, pursuant to reasonable State-established time standards not in excess of 30 days for . . . AFDC . . . Under this requirement, the applicant is informed of the agency's time standard in acting on applications, which covers the time from the date of application to the date that the assistance check, or notification of denial of assistance or change of award, or the eligibility decision with respect to medical assistance, is mailed to the applicant or recipient. The State time standards apply except in unusual circumstances (e.g.,) where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be

controlled by the agency, in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility may not be used as a basis for denial of an application or for terminating assistance."

The defendants have conceded that at present and during the last several years about half of all pending AFDC applications have been pending more than 30 days from the date of application, and that many have been pending more than 60 days. Employees of the defendant White testified that, while some of these cases were delayed beyond the required 30-day period because of failure on the part of the applicant, many were delayed because of tardy administration.

The only permissible reasons for delay beyond the 30-day period are those set forth in § 206.10(a)(3):

"where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency, in which instances the case record shows the cause for the delays."

Shortage of personnel or change of administrative procedures is not a sufficient reason under this regulation for delay beyond 30 days.² The regulation is specific that the 30-day maximum period covers:

²The defendant White's employees testified that a major cause of delay is the department's unwritten requirement that AFDC applicants personally visit the Family Relations Office of the Circuit Court, and that no action be taken on the application until the court sends a form acknowledging the visit. This requirement is not a valid reason for delay under § 206.10(c)(3). Family relations officers, with the aid of the defendant White, are authorized to institute proceedings for support, without the consent of the welfare recipient. Conn. Gen. Stats. § 17-32(c) (1969 Supp.). Burdens in connection with such proceedings cannot be shifted to the applicants on penalty of delayed eligibility determinations.

"the time from the date of application to the date that the assistance check, or notification of denial of assistance . . . is mailed to the applicant" 45 C.F.R. § 206 (a) (3).

The court finds that the defendants are not in compliance with § 206.10(a) (3), *supra*, because they have not made determinations of eligibility within the required 30-day period. Lax administration provides no justification for this delay in determining eligibility. The defendants are thus ordered to comply with § 206.10(a) (3), on penalty of the withdrawal of federal funds for the AFDC program in Connecticut.

Where the delay is not permissible under the regulation applicants will be presumed eligible and assistance checks mailed accordingly, within the 30-day period. Cf. *Dike v. Carter*, 448 F.2d 798 (8th Cir. 1971), *cert. denied*, 40 U.S. L.W. 3484 (U.S. Apr. 3, 1972); *Rodriguez v. Burak*, 318 F.Supp. 289, CCH Pov. L. Rep. par. 12,345 (N.D. Ill. 1970), *aff'd*, 403 U.S. 901 (1971), CCH Pov. L. Rep. par. 14,267 (N.D. Ill. 1972).

II. RETROACTIVE PAYMENTS

The plaintiffs' second claim is that the defendant White's policy of making payments retroactive only to the thirty-first day after the date of application to those recipients whose determination of eligibility was made more than 30 days after the date of application violates HEW regulations and the equal protection clause. The state policy for determining the effective date of assistance is as follows:

(1) Where the determination of eligibility is made in the same month that the application was filed, the initial award payment is authorized as effective from the date of application.

(2) Where the determination of eligibility is made within 30 days, but in a month subsequent to the month of applica-

tion, assistance is authorized as effective from the first of the month following the date of application.

(3) Where the determination of eligibility is made more than 30 days from the date of application, assistance is authorized as effective from the thirty-first day after the date of application. Manual § 370.2.

Thus, recipients whose eligibility is determined more than 30 days after the date of application are denied a full month's benefits.

The plaintiffs contend that the classification of recipients according to the date on which the welfare department makes the determination of eligibility is arbitrary and capricious, in violation of the equal protection clause and numerous HEW regulation. Title 45 C.F.R. § 233.20(a)(1) requires state AFDC programs to

"Provide that the determination of need and amount of assistance for all applicants or recipients will be made on an objective and equitable basis"

The plaintiffs contend that the distinctions made by the defendant White in the amounts of assistance to recipients, on the basis of the date of the determination of eligibility are not "made on an objective and equitable basis," and hence violate § 233.20(a)(1), and similar HEW regulations requiring equitable treatment of recipients.

HEW takes the position that the three classifications for the effective date of assistance do not violate the "equitable treatment" doctrine of § 233.10(a)(1) on the ground that the regulation "arose from the history of the program." HEW states that while federal financial participation in AFDC programs is available from the first of the month of the application for assistance, 45 C.F.R. § 234.120, in former years federal

funding was available beginning only with the month of authorization of payment.

With due deference to the expert opinion of HEW, the court fails to see why this bit of history justifies the different treatment of AFDC recipients, simply because the determination of their eligibility occurs at different times. This difference in treatment of those who apply for assistance on the same date does not rest on any statutory classification; even if it did, such different treatment is lacking in rational justification. The defendants offer only administrative convenience as a reason for the different treatment. This reason is insufficient to justify the different treatment. Even where the delay in processing is caused by the applicant, once a determination is made that he is eligible for assistance, the amount of assistance which he will receive is simply a matter of bookkeeping, the defendants have shown no justification for making assistance effective as of later dates for those recipients whose applications were delayed in processing. The defendant White's policy for retroactive payments, Manual § 370.2, is arbitrary and capricious, and results in inequitable treatment of the plaintiffs. As such, it is violative of 45 C.F.R. § 233.20(a)(1) and the equal protection clause of the fourteenth amendment.

On penalty of withholding federal funds, the defendants are enjoined from enforcing those provisions of Manual § 370.2 which provide for different effective dates of assistance for recipients whose eligibility is determined in a month subsequent to the month of application or more than 30 days after the date of application. The defendants are ordered to make assistance effective from a date no later than the date of application for all AFDC recipients, whatever the date of determination of eligibility. Cf. *Ewing v. Gardner*, 185 F.2d 781 (6th

Cir. 1950) (Social Security benefits to run from date of application); *contra*, *Jordan v. Swank*, CCH Pov. L. Rep. par. 14,266 (N.D. Ill. 1972).

The foregoing constitutes the court's findings of fact and conclusions of law. Fed.R.Civ.P. 52(a).

Dated at Hartford, Connecticut, this 16th day of June, 1972.

M. JOSEPH BLUMENFELD
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al.

v.

HENRY C. WHITE, Commissioner of Welfare,
State of Connecticut, et al.

**ADDENDUM TO MEMORANDUM OF
DECISION AND ORDER**

In order to insure compliance with the order of the court, and to prevent insubstantial motions for contempt in individual cases, the defendant White is further ordered to submit bi-monthly reports of the number of pending AFDC applications, including the number of applications which have been pending for more than 30 days from the entering of judgment in this case until July 1, 1973.

Finally, AFDC benefits retroactive to the date of application are ordered to be paid to all recipients whose applications have been approved since the filing of this suit, only to the extent that emergency town welfare benefits received by these recipients were less than the AFDC payments. Since many AFDC recipients are granted town welfare benefits pending the determination of eligibility under the state program, these recipients are not entitled to the windfall of double benefits for any period.

SO ORDERED.

Dated at Hartford, Connecticut, this 21st day of June,
1972.

M. JOSEPH BLUMENFELD
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al.

v.

HENRY C. WHITE, Commissioner of Welfare,
State of Connecticut, et al.

JUDGMENT

This cause having come on for hearing on plaintiffs' motion for preliminary injunction and hearing on the merits and the Court having rendered its Memorandum of Decision, Findings of Fact and Conclusions of Law under date of June 16, 1972 and Addendum to Memorandum of Decision and Order under date of June 22, 1972,

IT IS ORDERED, ADJUDGED AND DECREED:

(1) That the plaintiffs' suit brought in behalf of the designated class satisfies the requirement of Fed. R. Civ. P. 23(a) and (b) (2);

(2) That the defendants hereby comply with Title 45 C.F.R. § 206.10 (2)(3) with respect to the determination of eligibility for welfare assistance under the state program of Aid to Families with Dependent Children on penalty of the withdrawal of federal funds for the said AFDC program in Connecticut;

(3) That the defendants be and are hereby enjoined from enforcing those provisions of Manual § 370.2 which provide for different effective dates of assistance for recipients whose eligibility is determined in a month subsequent to the month

of application or more than 30 days after the date of application;

(4) That the defendants hereby make assistance effective from a date no later than the date of application for all AFDC recipients, whatever the date of determination of eligibility;

(5) That the defendant Henry C. White, Commissioner of Welfare, submit bi-monthly reports to the Court of the number of pending AFDC applications, including the number of applications which have been pending more than 30 days from the entering of judgment in this case until July 1, 1973; and

(6) That retroactive to the date of application AFDC benefits be paid to all recipients whose applications have been approved since the filing of this suit, only to the extent that emergency town welfare benefits received by these recipients were less than the AFDC payments.

Dated at Hartford, Connecticut, this 26th day of June, 1972.

GILBERT C. EARL

Clerk, United States District Court

BY FRANCES J. CONSIGLIO

Deputy In Charge

APPROVED:

M. JOSEPH BLUMENFELD

Chief Judge, U.S. District Court

EXHIBIT D

September 7, 1972

Honorable M. Joseph Blumensfeld
U. S. Chief District Court Judge
400 Main Street
Hartford, Connecticut

Dear Judge Blumensfeld:

In compliance with the order of the court to submit bi-monthly reports on AFDC cases pending over 30 days, the following is respectfully submitted.

To make this report fully comprehensive, the following facts are also submitted.

During the month of October 1971, a pilot program designed to reduce the time necessary to process applications was initiated in the Hartford District Office. There was a total of 6,868 pending cases for all categories statewide at the end of October 1971, 3,231 of which were pending AFDC. At the end of November 1971, there was a reduction in the number of pending cases in the Hartford District Office indicating the worthiness of our pilot program and it was introduced in every District Office in the following months. It became operational on a statewide basis on March 1, 1972. The following figures will be of interest to you.

	<u>Received during</u>	<u>Pending, end of</u>
March	4356	5315
April	3726	4749
May	4071	4416
June	4568	4560
July	4054	4992 (1461 AFDC, 433 of which are over 30 days)
August	5010	5490 (1378 AFDC, 224 of which are over 30 days)

Attached is the breakdown of reasons for pending cases for July and August.

Sincerely,

Nicholas Norton
Deputy Commissioner

Deputy Commissioner
 Larry W. Martucci
 Director, Eligibility Services

Re: AFDC applications pending over thirty days - August

In compliance with the recent U.S. District Court decision ordering the Welfare Department to process all AFDC applications within thirty days from the date of applications, and the addendum to said decision requesting a bi-monthly report on all AFDC applications pending over thirty days, the following is a breakdown of AFDC applications pending over thirty days as of the date of this report with the various reasons for delay:

46	applications	due to applicants' failure to submit required information to establish eligibility.
11	"	due to investigations in process of applicants' disposition of assets.
35	"	due to investigations in process of applicants' income or assets.
36	"	due to applicants' failure to meet eligibility requirements at present time (i.e. child not born yet, assignment of interest not received, etc.)
21	"	due to medical information not yet received.
15	"	due to pending medical determinations.
60	"	to be granted as otherwise eligible.

224 TOTAL

It should be noted that the number of pending AFDC applications has been greatly reduced in past few months, due to a more efficient intake operation. It should also be noted that 5,010 applications for all programs were received in June 1972 as against the average number of 3,656 applications per month.

LMG

ENCLOSURE

EXHIBIT E

November 8, 1972

Honorable M. Joseph Blumenfeld
 U.S. Chief District Court Judge
 400 Main Street
 Hartford, Connecticut

Dear Judge Blumenfeld:

In continuing compliance with the order of the court to submit bi-monthly reports on A.F.D.C. cases pending over 30 days, the following is respectfully submitted.

These reports to you are necessarily compiled from a case by case review as of the last calendar working day of the month.

	<u>Received during</u>	<u>Pending, end of</u>
October	4304	5482 (1137 A.F.D.C., 189 of which are over 30 days)

Attached is the breakdown of reasons for pending cases as of the end of October.

Sincerely,

Nicholas Morton
 Deputy Commissioner

NW/DM
 Att.

Deputy Commissioner
 Harry M. Harbusel
 Director, Eligibility Services

State Welfare Department

RE: AFDC Applications Pending Over Thirty Days - October

As per Judge Blumentfeld's order this is a follow-up to our September 7, 1972 report regarding AFDC applications pending over thirty days with the various reasons for delay:

14	applications	due to applicants' failure to submit required information to establish eligibility
27	"	due to investigations in process of applicants' disposition of assets
22	"	due to investigations in process of applicants' income or assets
57	"	due to applicants' failure to meet eligibility requirements at present time (i.e. child not born yet, assignment of interest not received,
27	"	due to medical information not yet received
26	"	due to pending medical determinations
4	"	to be granted as otherwise eligible
157	TOTAL	

cc: John E. Doyle

EXHIBIT F

JAN 31 1973

OFFICE OF
THE COMMISSIONER

STATE OF CONNECTICUT

STATE WELFARE DEPARTMENT
1000 ASYLUM AVENUE HARTFORD, CONNECTICUT 06115

January 11, 1973

for file
Classified
14, 764

Honorable M. Joseph Blumenfeld
Chief U. S. District Court Judge
450 Main Street
Hartford, Connecticut

Dear Judge Blumenfeld:

In continuing compliance with the order of the court to submit bi-monthly reports on AFDC cases pending over 30 days, the following is respectfully submitted:

Of the total 4,537 pending cases on December 29, 1972, 719 were AFDC applications; 145 of the 719 were pending over 30 days.

Attached is the breakdown of reasons for those cases pending over 30 days.

Sincerely,

Nicholas Norton
Nicholas Norton
Acting Commissioner

NN/upl
Attachment

Send In A Suggestion — Earn A Cash Award

INTERDEPARTMENT MESSAGE

SAVE TIME: Handwritten notes are acceptable.

Use carbon if you really need a copy. If typewritten, ignore faint lines.

TO	Nicholas Norton Commissioner	AGENCY Welfare	DATE January 8, 1972
FROM	Harvey M. Martucci Director	AGENCY Welfare - Eligibility Services	TELEPHONE
SUBJECT			

RE: AFDC Applications Pending Over Thirty Days - December

As per Judge Blumenfeld's order this is a follow-up to our November 7, 1972 report regarding AFDC applications pending over thirty days with the various reasons for delay:

13	applications	due to applicants' failure to submit required information to establish eligibility
5	"	due to investigations in process of applicants' disposition of assets
23	"	due to investigations in process of applicants' income or assets
41	"	due to applicants' failure to meet eligibility requirements at present time (i.e. child not born yet, assignment of interest not received, etc.)
32	"	due to medical information not yet received
22	"	due to pending medical determinations
9	"	to be granted as otherwise eligible.
145	TOTAL	

HMM:pat

cc: J. Boyle

EXHIBIT G



STATE OF CONNECTICUT
STATE WELFARE DEPARTMENT
1000 ASYLUM AVE. HARTFORD, CONNECTICUT 06103

March 13, 1973

FILED

MAR 15 8 22 AM '73

U.S. DISTRICT COURT
NEW HAVEN, CONN.

Honorable M. Joseph Blumenfeld
Chief U.S. District Court Judge
450 Main Street
Hartford, Connecticut

Dear Judge Blumenfeld:

In continuing compliance with the order of the court to submit bi-monthly reports on A.F.D.C. cases pending over 30 days, the following is respectfully submitted.

Of the total 4,752 pending cases on February 28, 1973, 974 were A.F.D.C. applications; 140 of the 974 were pending over 30 days.

Attached is the breakdown of reasons for those cases pending over 30 days.

Sincerely,

Nicholas Norton
Commissioner

NN:pat

Enclosure

Send In A Suggestion — Earn A Cash Award

ATTENTION MESSAGE

SAVE TIME. Handwritten messages acceptable.

Use carbon if you really need a copy of typewritten, ignore (omit) lines.

TO	Michael Morton	AGENCY Welfare	DATE
FROM	Commissioner	AGENCY Welfare - Eligibility Services	TELEPHONE
SUBJECT	Director <i>Morton</i>		

RE: AFDC Applications Pending Over Thirty Days - February

As per Judge Blumfeld's order this is a follow-up to our January 7, 1973 report regarding AFDC applications pending over thirty days with the various reasons for delay:

6	applications	due to applicants' failure to submit required information to establish eligibility
3	"	due to investigations in process of applicants' disposition of assets
17	"	due to investigations in process of applicants' income or assets
50	"	due to applicants' failure to meet eligibility requirements at present time (i.e. child not born yet, assignment of interest not received, etc.)
30	"	due to medical information not yet received
16	"	due to pending medical determinations
18	"	to be granted as otherwise eligible.
140	TOTAL	

MM:VBC:pat

cc: H. Boyle

EXHIBIT H



OFFICE
OF THE
COMMISSIONER

STATE OF CONNECTICUT

STATE WELFARE DEPARTMENT

1000 ASYLUM AVENUE - HARTFORD, CONNECTICUT 06105

May 7, 1973

FILED

MAY 11 8 19 AM '73

U.S. DISTRICT COURT
NEW HAVEN, CONN.

Honorable M. Joseph Blumenfeld
Chief U.S. District Court Judge
150 Main Street
Hartford, Connecticut

Dear Judge Blumenfeld:

In continuing compliance with the order of the court to submit
bi-monthly reports on A.F.D.C. cases pending over 30 days,
the following is respectfully submitted.

Of the total 4,321 pending cases on April 30, 1973, 842 were
A.F.D.C. applications; 120 of the 842 were pending over 30 days.

Attached is the breakdown of reasons for those cases pending
over 30 days.

Sincerely,

Nicholas Norton
Commissioner

NN:pat

Enclosure

Send In A Suggestion — Earn A Cash Award

DEPARTMENT MESSAGE

SAVE TIME: Handwritten notes are acceptable.

Use carbon if you really need a copy. If typewritten, ignore faint lines.

401 6-72

TO	Nicholas Horton	AGENCY Welfare	DATE May 7, 1973
FROM	Vincent B. Capuano	AGENCY Welfare - Eligibility Services	TELEPHONE
SUBJECT	Director		

RE: AFDC Applications Pending Over Thirty Days - April

As per Judge Blumenfeld's order this is a follow-up to our March 8, 1973 report regarding AFDC applications pending over thirty days with the various reasons for delay:

11	applications	due to applicants' failure to submit required information to establish eligibility
5	"	due to investigations in process of applicants' disposition of assets
17	"	due to investigations in process of applicants' income or assets
49	"	due to applicants' failure to meet eligibility requirements at present time (i.e. child not born yet, assignment of interest not received, etc.)
10	"	due to medical information not yet received
20	"	due to pending medical determinations
8	"	to be granted as otherwise eligible.
<u>120</u> TOTAL		

VBC:pat

cc: H. Boyle

EXHIBIT I



STATE OF CONNECTICUT

STATE WELFARE DEPARTMENT

1000 ASYLUM AVENUE HARTFORD, CONNECTICUT 06115

OFFICE OF
THE COMMISSIONER

July 13, 1973

Cm 14,764

Honorable M. Joseph Blumenfeld
Chief U. S. District Court Judge
450 Main Street
Hartford, Connecticut

Dear Judge Blumenfeld:

In compliance with the order of the court to submit bi-monthly reports on A.F.D.C. cases pending over 30 days, the following is respectfully submitted as our final report.

Of the total 4,727 pending cases on June 30, 1973, 1,110 were A.F.D.C. applications; 137 of the 1,110 were pending over 30 days.

Enclosed is the breakdown of reasons for those cases pending over 30 days.

Sincerely,

Nicholas Norton
Nicholas Norton
Commissioner

NN:vcp

Enclosure

FILED
JUL 16 10 23 AM '73
U.S. DISTRICT COURT
HARTFORD, CONN.

Send In A Suggestion — Earn A Cash Award

MESS E

SAVE TIME. Handwritten messages are acceptable.

Use carbon if you really need a copy. If opportunity, remove first copy.

Charles Norton	AGENCY Welfare	DATE July 9, 1973
Commissioner		
FROM Vincent B. Caputo	AGENCY Welfare - Eligibility Services	TELEPHONE
Director		
SUBJECT		

RE: AFDC Applications Pending Over Thirty Days - June

As per Judge Blumenfeld's order this is a follow-up to our May 7, 1973 report regarding AFDC applications pending over thirty days with the various reasons for delay:

20	applications	due to applicants' failure to submit required information to establish eligibility
4	"	due to investigations in process of applicants' disposition of assets
22	"	due to investigations in process of applicants' income or assets
48	"	due to applicants' failure to meet eligibility requirements at present time (i.e. child not born yet, assignment of interest not received, etc.)
16	"	due to medical information not yet received
12	"	due to pending medical determinations
15	"	to be granted as otherwise eligible.
<u>137 TOTAL</u>		

JBC:pat

cc: H. Boyle

EXHIBIT O

Agency	Address	Telephone
City	State	
Zip		
Effective Date: Upon Receipt		

B. Initial Award Award

The often, retroactive payments have been issued for a period of time in which the client and another source of income to meet his needs. Consequently, to ensure satisfaction of payment and avoid duplication, we are asking that you adhere to the following procedures:

A. New - C.O. Cases

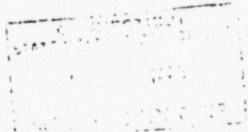
If, on an initial award, a retroactive payment has to be issued to a resident not receiving General Assistance, and the retroactive check equals the amount allocated for the current month in addition to any previous award, prior authorization must be obtained from the District Director, C.O., and the District Director must be notified of the award.

It will be the responsibility of the Intake Unit, in processing the M-52, to identify and record what needs did, in fact, exist, specifying clearly what the needs were: e.g., shelter, utilities, food, etc.

B. C.O. Cases

In the case where General Assistance is involved, if, after Town reimbursement, the applicant to the resident exceeds \$100, the following procedures must be followed:

1. After receiving billing from the Town, the C.O. General Assistance Section will send a Xerox copy of the initial award M-52, together with a M-110, to the C.O. Control Unit for transmittal to the respective D.O. Intake Units.
2. The Intake Unit Supervisor will be responsible for:
 - a. " Being and clearly specifying on the Xerox copy of the M-52 what recipient's needs were and what period of time they cover;
 - b. having the Xerox M-52 countersigned by the District Director;
 - c. returning the M-52, together with the M-110, through the D.O. Control Unit to the C.O. Eligibility Review File Section.



ONLY COPY AVAILABLE

II. Processing of Incorrect Initial Award W-52's: W-52, C-1, C-2 and AD

- All initial award W-52's needing corrections which affect the present delivery of a money payment will be referred by the New Awards Section in Central Office to the Central Office Check Expediter who will transmit the information to their counterparts in the Districts for processing.

On receiving the call from Central Office, the D.O. Expediter will prepare an M-52 in duplicate, noting the time of the call and the error found on the W-52. A copy of the W-52 will be retained for control purposes; the original will be forwarded to the Intake Supervisor in whose unit the error originated. Replies to the W-52 will be received within 24 hours from the time the call was received.

Once a problem is resolved, the Intake Supervisor will write a complete and thoroughly documented reply on the W-52, sign it, and return it to the D.O. Expediter. This will serve as an official authorization for the D.O. Expediter to call the C.O. Expediter, who will prepare a new W-52 correcting the error. (The C.O. Expediter will retain the C.O. and Tab copies of the correcting W-52, sending the rest back to the District for mailing to the recipient and for filing.)

It will be the responsibility of the D.O. Check Expediter to note on the original W-52 that a correcting W-52 has been completed at C.O., to clear the control file and then forward the W-52 for filing in the case record.

NOTE: If an initial award W-52 has been sent to Central Office but, for some reason, the authorization should be voided, the Intake Unit can void the D.O. Check Expediter for transmitting such information to Central Office. In this way, a new W-52 can be completed in time to prevent the initial award payment from being made.

In order to evaluate the causes of errors on initial award authorizations and to facilitate remedial action, Central Office will maintain a control as to the kind and number of errors in each District Office. At the end of each month, this listing will be forwarded to the Director of Eligibility Services as well as to the District Directors for review.

In summary, we would like to re-emphasize that it is the responsibility of the Intake Supervisors to screen all initial award W-52's for accuracy. Only by carefully reviewing all W-52's can we hope to avoid costly and, very often, unnecessary errors.

1.
2. [unclear]
3. [unclear]
4. [unclear]
5. [unclear]

EXHIBIT A

W.I.A. (10/72)

1.

CONNECTICUT STATE WELFARE DEPARTMENT - INCOME MAINTENANCE

1 - DISTRICT OFFICE REPORT OF APPLICATIONS

Report for month ending July 31, 1973District No. Winchester Sub-office
Unit Intake

A. APPLICATION ACTIVITY	OAA	AB	AD	AFTC	XIX FAM	XIX ADULT	TOTAL AFTS
1. Pending from preceding month	12	2	64	68	22	124	297
2. Received during month	15	0	46	97	26	67	291
a. New	15	0	46	97	24	63	245
b. Transferred in from other district	0	0	0	0	2	0	2
c. Transferred in from other unit	0	0	0	0	0	4	4
3. Additions due to change in income designation	1	0	2	1	3	0	13
4. Total of lines 1, 2, and 3	28	2	112	166	51	197	660
5. Subtractions due to change in income designation	3	0	3	2	1	4	13
6. Termination during month	7	2	24	83	27	59	202
a. Awarded	5	2	10	33	6	33	89
b. Deceased	1	0	13	31	14	18	77
c. Other disposition	1	0	1	19	7	8	36
7. Transferred out during month	0	0	2	1	0	0	3
a. Transferred out to other district	0	0	0	1	0	0	1
b. Transferred out to other unit	0	0	2	0	0	0	2
8. Total of lines 5, 6, and 7	10	2	29	86	28	64	218
9. Pending at end of month	18	0	83	80	23	134	338
B. LENGTH OF TIME PENDING	OAA	AB	AD	AFTC	XIX FAM	XIX ADULT	TOTAL AFTS
1. Less than one month	12	0	44	69	18	61	204
2. One month less than two months	2	0	19	9	3	44	77
3. Two months or longer	4	0	20	2	2	29	57
4. Total	18	0	83	80	23	134	338

EXHIBIT B

1-13. (12/71)

1.

CONNECTICUT STATE WELFARE DEPARTMENT - INCOME MAINTENANCE

1 - DISTRICT OFFICE REPORT OF APPLICATIONS

Report for month ending August 31, 1973District No. Manchester Sub-off.
Unit Intake

A. APPLICATION ACTIVITY	CAA	AB	AD	APFC	XIX FAM	XIX ADULT	TOTAL APPS
1. Pending from preceding month	16	0	83	80	23	134	336
2. Received during month	19	1	30	139	36	62	277
a. New	19	1	24	139	36	61	271
b. Transferred in from other district	0	0	0	0	0	0	0
c. Transferred in from other unit	0	0	1	0	0	1	2
3. Additions due to change in Program designation	0	0	1	2	0	5	8
4. Total of lines 1, 2, and 3	35	1	114	221	58	197	625
5. Subtraction due to change in Program designation	2	0	3	0	1	2	8
6. Termination during month	7	0	18	95	23	48	201
a. Awarded	5	0	13	49	0	37	114
b. Pended	1	0	4	30	9	13	67
c. Other disposition	1	0	1	16	5	6	31
7. Transferred out during month	0	0	1	0	0	2	3
a. Transferred out to other district	0	0	0	0	0	0	0
b. Transferred out to other unit	0	0	1	0	0	2	3
8. Total of lines 5, 6, and 7	9	0	22	95	24	62	212
9. Pending at end of month	28	1	92	126	34	129	410

B. LENGTH OF TIME PENDING	CAA	AB	AD	APFC	XIX FAM	XIX ADULT	TOTAL APPS
1. Less than one month	17	1	28	115	28	46	235
2. One month less than two months	8	0	40	11	3	43	105
3. Two months or longer	3	0	24	0	3	40	70
4. Total	28	1	92	126	34	129	410

W-12, (10/71)

1.

CONNECTICUT STATE WELFARE DEPARTMENT - INCOME MAINTENANCE

1 - DISTRICT OFFICE REPORT OF APPLICATIONS

Report for month ending September, 1973District No. Manchester Sub-Office
Unit Income

A. APPLICATION ACTIVITY	CAA	AB	AD	AFDC	XIX FAM	XIX ADULT	TOTAL APPS
1. Pending from previous month	28	1	92	126	34	120	401
2. Received during month	15	0	68	104	24	69	280
a. New	13	0	58	104	24	69	268
b. Transferred in from other district	2	0	0	0	0	0	2
c. Transferred in from other unit	0	0	0	0	0	0	0
3. Additions due to change in Program designation	1	0	1	0	1	1	4
4. Total of lines 1, 2, and 3	44	1	151	230	60	190	676
5. Subtraction due to change in Program designation	0	0	4	1	0	2	7
6. Termination during month	11	1	34	80	27	10	163
a. Awarded	9	0	20	39	10	25	123
b. Denied	1	1	11	25	14	10	62
c. Other disposition	1	0	3	16	1	5	26
7. Transferred out during month	0	0	0	0	0	1	1
a. Transferred out to other district	0	0	0	0	0	1	1
b. Transferred out to other unit	0	0	0	0	0	0	0
8. Total of lines 5, 6, and 7	11	1	38	81	27	13	201
9. Pending at end of month	33	0	112	149	32	149	475
B. LENGTH OF TIME PENDING	CAA	AB	AD	AFDC	XIX FAM	XIX ADULT	TOTAL APPS
1. Less than one month	15	0	56	103	24	59	257
2. One month less than two months	13	0	21	45	5	32	116
3. Two months or longer	5	0	36	1	3	58	103
4. Total	33	0	113	149	32	149	475

EXHIBIT D

104 (a/12)

1.

CONNECTICUT STATE POLICE DEPARTMENT - INCOME MAINTENANCE

1 - DISTRICT OFFICE REPORT OF APPLICATIONS

Report for month ending October, 1973District No. Norchester Sub-office
Unit Inter

A. APPLICATION ACTIVITY	CAA	AS	AD	AFDC	XIX FAM	XIX ADULT	TOTAL AFDC
1. Received from preceding month	33	0	115	149	32	149	476
2. Received during month	6	0	46	111	27	73	263
a. New	6	0	46	111	27	73	263
b. Transferred in from other district	0	0	0	0	0	0	0
c. Transferred in from other unit	0	0	0	0	0	0	0
3. Additions due to change in program designation	0	0	1	0	0	7	8
4. Total of lines 1, 2, and 3	39	0	162	260	59	229	789
5. Subtraction due to change in program designation	2	0	5	0	0	1	8
6. Termination during month	8	0	36	91	19	56	210
a. Awarded	7	0	16	47	5	32	107
b. Denied	1	0	19	29	12	19	70
c. Other disposition	0	0	3	15	2	7	27
7. Transferred out during month	1	0	1	1	0	1	4
a. Transferred out to other district	0	0	0	0	0	0	0
b. Transferred out to other unit	1	0	1	1	0	1	4
8. Total of lines 5, 6, and 7	11	0	42	92	19	60	224
9. Pending at end of month	28	0	118	168	40	169	523

B. LENGTH OF TIME PENDING	CAA	AS	AD	AFDC	XIX FAM	XIX ADULT	TOTAL AFDC
1. Less than one month	5	0	43	101	26	66	241
2. One month less than two months	12	0	42	57	10	41	162
3. Two months or longer	11	0	33	10	4	62	120
4. Total	28	0	118	168	40	169	523

EXHIBIT E

W-12. (12/72)

CONNECTICUT STATE WELFARE DEPARTMENT - INCOME MAINTENANCE

1 - DISTRICT OFFICE REPORT OF APPLICATIONS

Report for month ending December, 1973District No. Worcester Sub-office
Unit Intake

A. APPLICATION ACTIVITY	CAA	AB	AD	AFDC	XIX FAM	XIX ADULT	TOTAL AFPS
1. Pending from preceding month	27	0	126	155	63	168	479
2. Received during month	8	1	40	76	37	60	252
a. New	8	1	39	76	36	60	254
b. Transferred in from other district	0	0	0	0	1	2	3
c. Transferred in from other unit	0	0	1	0	0	1	2
3. Additions due to change in Income designation	0	0	0	0	1	4	5
4. Total of lines 1, 2, and 3	35	1	166	231	101	230	763
5. Subtraction due to change in Income designation	2	0	2	1	0	0	5
6. Termination during month	8	0	29	68	32	54	221
a. Awarded	6	0	12	49	10	26	103
b. Denies	1	0	13	36	15	17	82
c. Other disposition	1	0	4	13	7	11	36
7. Transferred out during month	1	0	3	0	1	0	5
a. Transferred out to other district	0	0	2	0	0	0	2
b. Transferred out to other unit	1	0	1	0	1	0	3
8. Total of lines 5, 6, and 7	11	0	34	69	33	54	231
9. Pending at end of month	24	1	131	132	68	215	561
B. LENGTH OF TIME PENDING	CAA	AB	AD	AFDC	XIX FAM	XIX ADULT	TOTAL AFPS
1. Less than one month	6	1	38	72	30	88	235
2. One month less than two months	11	0	31	51	24	46	163
3. Two months or longer	7	0	62	9	4	81	163
4. Total	24	1	131	132	58	215	561

EXHIBIT G

JOHN WILSON	11/ 9/73	12/ 31/73	12/12/73	1/ 9/73	No W-52
MARY PEARLINS	10/ 1/73	10/29/73 (Secret)		12/12/73	No W-52
Barbara Shipper	11/13/73	12/11/73 (Secret)			NO REIMBURSEMENT YET
MELAGROS LOZADA	10/26/73	12/13/73 (Secret)			PENDING DUE TO INVESTIGATION
ELI GALLARDO	9/21/73	10/16/73	Granted	10/19/73	" " "
JOHN CASSELL	8/16/73	9/13/73	9/26/73	10/ 8/73	NO REIMBURSEMENT ON RECORD
PAVELA DICKIN	9/11/73	11/28/73	7/ 1/73	12/ 7/73	
MARY GOVERNADO	7/11/73	7/26/73		3/23/73	
CONCELA BASHON	SEE FILE				
MARGARET DEGUAY	9/5/73	9/24/73 (Secret)		11/ 2/73	
GRACE WHITE	10/12/73	11/21/73		12/ 7/73	
MURRAY ST. JOHN	10/19/73	12/13/73 (Secret)		1/ 9/74	No W-52
GLORIA CYR	9/11/73	10/30/73		11/26/73	
LINDA QUIRLON	10/12/73			12/12/73	
SANDRA NICKERSON	See File				
CAROL PETILLO	11/23/73	12/11/73 (Secret)			
LINDA DIAZ					
MARGARET WILKER					
Y. TONG	12/11/73				

Appropriate routing
to 11-52

ONLY COPY AVAILABLE

EXHIBIT G

AVERAGE (51 days before granting)

ANDREW HODGES	7/11/73	7/11/73	
LINDA CHURCHILL	11/ 6/73	12/10/73	
AND JACKSON	12/21/73	Town paid Jan. rent	
COTALEE HUTSON	7/ 2/73		
SHIRLEY MAC KEEN	7/31/73		
ROBERTA DAGGETT	7/13/73		
MASSHA NOCK	7/12/73		
ELAINE PAIRB	12/16/73		
SUSAN FLANNERY	8/ 2/73		
PATRICIA LEDUC	7/31/73		

Pending working with Sec.
worker Mrs. Rollins
waited to keep () two
appointments. Reconciled with
husband by 3rd appoint.
Dated - failure to keep
appts. 8/20/73-8/20/73

Did not keep appointment

Application withdrawn 7.

Applied. Pending
Appt. Pending

3 - 10/11/73
3 - 11/ 6/73
3 - 12/21/73
3 - 7/ 2/73
3 - 7/31/73
3 - 7/13/73
3 - 7/12/73
3 - 12/16/73
3 - 8/ 2/73
3 - 7/31/73

EXHIBIT G

Month of <u>JULY</u>	Six applications	3 Granted
Month of <u>AUGUST</u>	Two applications	1 Granted - 1 Denied
Month of <u>September</u>	Four applications	4 Granted
Month of <u>OCTOBER</u>	Five applications	4 Granted - 1 Pending
Month of <u>November</u>	Four applications	1 Granted - 3 Pending
Month of <u>DECEMBER</u>	Four applications	4 Pending

**TRANSCRIPT OF THE HEARING ON MOTION FOR
CONTEMPT AND OTHER RELIEF (January 10, 1974)**

• • •

Pp. 8-9

Q. The date of the order was December 1, '71. So what have you done about digging back into those earlier cases in order to make up the difference in the event that those payments were not retroactive to the date of application?

A. Well, your Honor, it's a much difficult task and it would have been probably easier when the order was rendered on June the 16th of '72 to identify those cases.

• • •

P. 31

THE COURT: But, you see, this order or directive puts the burden of proof on the applicant to show that she did not receive anything.

MR. WALSH: If that is the case, your Honor, then it is clearly in violation of the Court order.

I say that is not the burden of that memorandum. If it is, of course —

• • •

Pp. 36-37

BY THE COURT:

Q. Do you know, Mr. DiNallo, in how many instances the retroactive amount in excess of \$250 was further reduced by ascertaining that certain other needs had been met beyond town assistance? A. That I don't know, your Honor. However, I can give you some very interesting figures.

80 per cent of the retroactive payments are paid automatically. 10 per cent there is no retroactive payment to be

made because the town has met the full needs. 10 per cent are being questioned. And it is my assumption that probably 5 per cent, or 2 or 3 per cent for that matter, is affected by this directive.

. . .

Pp. 42-43

Was it your testimony that the Department no longer has the records prior to December 1st, 1972 for A.F.D.C. applications? A. Where there was general assistance rendered, yes.

Q. Where there was general assistance. You no longer have the cases? A. No. We no longer have the copies of the 52-T that are kept in our BBA for the purpose of reconciling those records with the number of cases that we are now talking, where retroactive payment was not made.

Q. And you realize that that period December 1st, 1971 to December 1st, 1972, a full year, was covered by this Court's previous orders? A. Well, I wish to point out, your Honor, that I've been appointed —

Q. Isn't that true?

THE COURT: Just a minute.

A. —that I've been appointed Assistant Chief of Eligibility Services only six months ago. This was the responsibility of Mr. Martucci at the time that the order was rendered by this Court.

Q. (By Mr. Sturdevant) I'm just saying for a time period it was a year in which we now do not have records in order to comply with the orders of this Court, if that's what is ordered. Is that correct? A. Unfortunately, that's correct. For the GA cases, it is correct.

. . .

Pp. 48-49

Q. Would you read the first category on that form?

A. It is "Due to applicant's failure to submit required information to establish eligibility".

Q. And what is the second category on the form?

A. It is "Due to investigation in process of applicant's disposition of assets".

Q. Is that particular category related to any fault on the part of the applicant in failing to submit information? A. We are not talking fault. We are talking failure to submit certain information.

Q. That's in the first category. A. And it would be in the second category, as well.

This is a person that comes in to us and says to us I've disposed of my house, the proceeds were \$15,000, I gave it to my children.

Q. So he gives you all the information that you've asked for and that he has? A. Correct.

Q. So then it's up to the Department to make the investigation? A. Correct.

• • •

Pp. 56-57

BY THE COURT:

Q. Mr. DiNallo, we get these reports, you know. Do you think they look pretty good?

You can do better than that, can't you?

A. We can do better than that, yes, your Honor. Especially now since this conversation is over.

As a matter of fact, I believe that our July report looks fairly favorable to the Department, I would say. It's only 11 per cent of the cases that were due to departmental delay.

But can we do better? My answer is yes for that, your Honor.

° ° °

Pp. 61-62

MR. WALSH: I would just like to say, your Honor, I think we can save time.

We are prepared to say that we are in non-compliance to some extent with the Court's order. We admit that. And Mr. Capuano has some figures on that. I believe they were already given.

° ° °

P. 63

MR. WALSH: We will concede that, your Honor. We concede that in some cases the town general assistance award is lower.

° ° °

Pp. 72-73

Q. So that is it true that 37 per cent took longer than the thirty day required period to process? A. That's correct.

Q. Thank you. Would you identify this report? A. This is the report ending for October, 1973, for the Manchester Sub-Office Intake Unit.

Q. How many AFDC applications does the report indicate that were pending from previous months? A. One hundred forty-nine.

THE COURT: Well, this is repetitious. It's just going through some other months, right?

MR. STURDEVANT: Yes, your Honor. It does show increasing degrees of non-compliance with this Court's order.

THE COURT: It shows a pattern. All right. Go ahead. Anything else of Mr. Hayes?

MR. STURDEVANT: No, your Honor, except the same information from the other reports which have already been received into evidence. I can ask him the questions.

THE COURT: Yes. The other couple of months?

MR. STURDEVANT: Yes.

THE COURT: Yes, all right. You don't need to go through those.

MR. STURDEVANT: All right.

THE COURT: The pattern is shown.

• • •

Pp. 75-76

Q. (By Mr. Sturdevant) Mr. Hayes, I notice that we don't have a report for the month of November. A. I had it, yes. My clerk probably when he xeroxed the copy inadvertently missed submitting it, putting it back into the record. But we have it.

Q. Do you remember at all the statistics from that report?

A. Not right now I don't.

Q. Were they similar to the months —

A. They'd be very similar. If you look at the beginning of the December report it would show you the number of applications pending at the end of the month. It would be the same as pending at the 1st of December.

Q. Was the degree of processing within thirty days roughly the same? A. That's true. I think it's 149, 153; it would be very, very similar.

Q. In December? A. Right. The average would be very similar to December.

Q. So that we can assume that the Manchester District Office did not process AFDC applications, 38 per cent of them or theseabouts, within the thirty-day period? A. It's thirty-something. The ratio is not that much different. It's a little lower than 37, maybe.

BY THE COURT:

Q. Well, if you had a little more help over there could you get them out sooner? A. I think so, your Honor; yes, I do.

• • •

P. 82

CROSS-EXAMINATION BY MR. WALSH:

Q. Do you know, Mr. Hayes, whether the Manchester District is the worst District with respect to processing applications at this time? A. I should certainly hope not. I don't know.

MR. STURDEVANT: Objection, your Honor.
I don't believe he knows.

Q. Just yes or no. A. No.

• • •

Pp. 89-90

Q. Referring your attention to Page 2 of the exhibit for the number of people listed in the exhibit, what is the average

period of time until the A.F.D.C. application is disposed of?

A. The average is fifty-one days before grant.

THE COURT: Now, that fifty-one day average is from the time of the first communication to the district office?

THE WITNESS: This is the state date of application.

THE COURT: The state's date?

THE WITNESS: Right.

• • •

P. 92

Q. And in your position there can you state whether or not the level of town assistance benefits for the Town of Vernon is, excepting extraordinary circumstances, less than the amount of the A.F.D.C. assistance flat grant? A. It is.

Q. And is it less? A. Yes.

Q. Is it substantially less? A. Yes

• • •

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 14764

ELENA CLASS, et al.

v.

NICHOLAS NORTON, Successor to Henry C. White,
individually and as Commissioner of the
State of Connecticut Welfare Department, et al.

**RULING ON PLAINTIFFS' MOTION FOR
CONTEMPT AND OTHER RELIEF**

On June 16, 1972, a Memorandum of Decision in the instant case was filed ordering the defendant Connecticut Commissioner of Welfare to comply with applicable federal regulations by determining the eligibility of applicants for welfare assistance under the state program of Aid to Families with Dependent Children (AFDC) within 30 days from the date of application for assistance. If no determination of eligibility were made by the end of the 30-day period, the Commissioner was ordered to presume that the applicant was eligible for assistance and to mail assistance checks accordingly. The Commissioner was further ordered to make assistance effective from a date no later than the date of application for assistance, whatever the date of determination of eligibility. An Addendum to the Memorandum of Decision was filed on June 22, 1972, in which the Commissioner was further ordered to submit bi-monthly reports of the number of pending AFDC applications, including the number of applications which were pending for more than 30 days. The Addendum also specified that AFDC benefits retroactive to the date of application for all recipients whose applications were approved since the filing of this suit were to be paid only to the extent that emergency town welfare benefits received by the recipients were less than

the AFDC benefits. The plaintiffs have now moved that the defendant Commissioner of Welfare be adjudged in contempt of this Court for failure to comply with this Court's orders of June 16 and June 22, 1972.

I. THE EFFECTIVENESS OF THE IMPLEMENTATION OF THIS COURT'S ORDERS OF JUNE 16 AND JUNE 22, 1972

The evidence introduced by the plaintiffs at the hearing on this motion and submitted in the form of affidavits clearly demonstrates that this Court's orders of June 16 and June 22, 1972, have not been effectively implemented. Indeed, the defendants do not dispute this conclusion; rather, they maintain that they have taken all reasonable steps to implement this Court's orders within the practical limitations of existing budgetary and personnel constraints. While I am unwilling to infer willful disobedience of this Court's orders on the part of the defendants, I am disturbed at the extent to which those orders have not been effectively implemented. The evidence demonstrates that the non-compliance has been substantial and widespread. The Welfare Department's own bi-monthly reports indicate that during the period July 1972 through June 1973, substantial numbers of AFDC applications were not acted upon within 30 days, totaling 1,386 during the 12-month period. Applications pending longer than 30 days constituted a significant proportion of all applications pending at the end of each month, ranging in percentage from 29.6% to 12.3% and averaging 18.1%. There has apparently been some progress in processing of applications, since the number of applications pending longer than 30 days has decreased somewhat in recent months. However, the plaintiffs have submitted affidavits of welfare recipients indicating that delays of 40 days and more have occurred with no final determination of eligibility. In some instances applicants for assistance were not even given appointments with welfare workers at which applications

could be completed until more than 30 days after their initial requests for assistance.

Moreover, the plaintiffs have submitted affidavits indicating that at least in some cases the Welfare Department has refused, in making retroactive payments, to make assistance effective from the date of application for assistance.

These recipients have been fortunate in receiving the assistance of Legal Services counsel; the Court can only speculate about the number of people who lost benefits to which they were entitled for failure to challenge the improper actions of the Welfare Department.

There appear to be several factors contributing to the ineffective implementation of this Court's orders. At the hearing on this motion, Anthony DiNallo, Assistant Chief of Eligibility Services of the Connecticut Welfare Department, and John J. Hayes, District Supervisor of Intake in the Manchester District Office of the State Welfare Department, both indicated in their testimony that delays in paying retroactive benefits and in processing pending applications could be traced to a lack of sufficient numbers of office personnel.¹ In the order of June 16,

1972, however, it was stated, "Lax administration provides no justification for this delay in determining eligibility." The point is no less true now: non-compliance with this Court's orders will not be excused because the Welfare Department has failed to assign sufficient personnel to the task. No departmental economies are realized by maintaining a backlog of unfinished work — only unjustified delay in the completion of it. And

¹Mr. DiNallo testified that determinations of eligibility for retroactive payments in currently *active* cases could be done quickly, since the records are computerized. Eligibility determinations for *inactive* cases, however, would take a considerable amount of time, since the records are not computerized and the review process requires hand-screening of approximately 160,000 status cards on all categories of welfare recipients.

this is clearly to the detriment of the intended beneficiaries. Furthermore, it results in greater out-of-pocket cost to the state because the reimbursement to towns for assistance they provide is not shared by the federal government under the federally-funded state welfare plan. It is obvious that the sooner town assistance is supplanted by federally-shared assistance, the less the drain on the state's funds.

A second factor contributing to the ineffective implementation of this Court's orders appears to be the specific procedures utilized by local offices of the State Welfare Department in processing applications for assistance, a factor which may be attributed to a misunderstanding of the requirements of this Court's orders on the part of Welfare Department personnel. The plaintiffs submitted affidavits indicating that in the Bridgeport office of the State Welfare Department two weeks is the average period of time between an applicant's initial request for assistance and the date of appointment with a welfare worker, at which time the application could be completed. This two-week period is purportedly not due to failure of the applicant to furnish necessary information, but rather for "administrative convenience." After the application is completed, the welfare worker must verify the information given, fill out other required forms, and secure the approval of eligibility from a supervisor, a process which generally takes another two weeks. After approval by the supervisor, further processing by the Welfare Department consumes another two weeks before the first assistance check is mailed to the applicant. This six-week period between initial application and mailing of first AFDC checks is at odds with both the spirit and letter of this Court's prior orders. There is some indication that the local supervisor erroneously believes that the 30-day requirement only applies to the period between initial application for assistance and approval of eligibility by the supervisor. The supervisor thus believes his office to be in

compliance with this Court's prior orders. He is mistaken. The order of June 16, 1972, makes it clear that the 30-day period is to be measured from the date of application for assistance to the date that the first assistance check (or notification of denial of assistance) is mailed to the applicant.

The apparent misunderstanding of this Court's prior orders has been exacerbated by the promulgation of two directives by the Welfare Department, on May 4, 1973, and on December 4, 1973. The May 4 directive provides that in the case of retroactive payments to a recipient who did not receive emergency town assistance, where the retroactive check exceeds the amount budgeted for the current month in addition to one previous month, prior authorization must be secured from the district director. The district director will provide such authorization only when the Intake Worker has *verified and recorded* "that need did, in fact, exist, specifying clearly what the unmet needs were: e.g., shelter, utilities, food, etc." The directive further provides that where recipients did receive emergency town assistance, if, after deducting the amount of town assistance, the payment exceeded \$250, it must be verified and clearly specified "what the recipient's unmet needs were and what period of time they cover" The directive dated December 4, 1973, attempted to clarify the earlier directive by stating that "a client should be notified that for *30 days* within receipt of a retroactive check, the amount over \$250 will not be considered an asset. After thirty days, however, if the recipient retains money in excess of \$250, he will be ineligible until he disposes of the excess amount."

The plaintiffs claim that these directives establish a policy whereby the Welfare Department absolutely denies retroactive payments to recipients absent proof of "unmet needs" and arbitrarily limits the amount of retroactive payments to \$250 for those who received emergency town assistance, absent

proof of unmet need. They claim that this policy is in "direct defiance" of this Court's prior orders.

The defendant Commissioner of Welfare maintains that the requirement of verification of unmet needs carries out the duty imposed upon him by the Social Security Act, which requires that "... the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children" 42 U.S.C. § 602(a) (7). The Commissioner claims that the limitation amount of \$250 is justified as a means of insuring that recipients properly meet welfare eligibility standards. The Assistant Attorney General representing the Commissioner conceded at the hearing on this motion that if the Welfare Department directives were interpreted by Department personnel as putting the burden upon the recipient to justify retroactive payments by demonstrating "unmet need," then Department policy would be violative of this Court's prior orders.

Efforts by the Commissioner to comply with the legal mandate imposed by the Social Security Act are, of course, justified and commendable. However, the affidavits and exhibits submitted by the plaintiffs indicate that even where a fair hearing officer recognized that there was unreasonable delay by the Department in determining eligibility, he nevertheless denied retroactive payments because "unmet needs" had not been demonstrated by the recipient. Thus at least some Department personnel have interpreted Department policy as placing the burden on the recipient to justify the retroactive payments.²

²The fair hearing decision in one particular case noted by plaintiffs was rendered on April 4, 1973, before the Department's directives were issued. It is not clear, however, that the departmental policy of requiring verification of "unmet needs" was not in effect before the directives were issued, and correspondence submitted by the plaintiffs indicates that the problem in that particular case had not been resolved, and the recipient had not received retroactive payments, as late as November 27, 1973.

Insofar as they place a burden upon the recipient to justify the retroactive payments by demonstrating "unmet need" during the pendency of the application, the directives are violative of this Court's prior orders. If someone else without legal obligation to do so provides some assistance to prevent an applicant from starving, that is irrelevant to the defendant's obligation to provide assistance statutorily mandated. The Court notes that the requirements imposed upon the Commissioner by the Social Security Act with respect to proper determinations of eligibility may be carried out by enforcement of the appropriate state statutes, *i.e.*, Conn Gen. Stats. § 17-82d, under which the Commissioner makes periodic investigations to monitor eligibility, and Conn. Gen Stats. § § 17-82m and 17-83i, which provide for civil actions to recover overpayments and for criminal prosecutions for fraud in obtaining welfare assistance, and by proper implementation of the provisions of the Welfare Department Manual relating to adjustments and reviews of recipients' eligibility, Manual, Vol. I, Ch. III, Index No. 2330.

Moreover, the plaintiffs' argument that imposition of a fixed dollar amount limiting retroactive payments constitutes a disincentive to the Department to process eligibility applications speedily is well taken. Without imputing any deliberate design to circumvent this Court's orders to Department personnel, it is nevertheless evident that a \$250 limit on retroactive payments following delay in processing applications is likely to have this effect. In view of these circumstances, it is apparent that a clear statement of the Department's policy with respect to retroactive payments is presently needed.

II. RELIEF

Although the failure of compliance with this Court's prior orders on the part of the Department appears to have been substantial, I have concluded that the drastic remedies which plaintiffs seek — citation of the defendant Commis-

sioner for contempt and issuance of an injunction preventing use of federal funds for the AFDC program in Connecticut — would be inappropriate in the circumstances of this case at this time. Compare *Rosado v. Wyman*, 397 U.S. 397, 420-423, on remand 322 F.Supp. 1173, 1196 (E.D. N.Y.), *aff'd* 437 F.2d 619 (2d Cir. 1970), *aff'd* 402 U.S. 991 (1971); *Connecticut St. Dept. of Pub. W. v. Department of H.E.W.*, 448 F.2d 209 (2d Cir. 1971). It appears that much of the failure of compliance may have been the result of good faith attempts on the part of Department personnel to implement policies which were not sufficiently clarified by Department administrators. Nevertheless, continued non-compliance cannot and will not be tolerated, and I find it necessary to draw on the "broad discretionary power" of the trial court to fashion equitable remedies which are "a special blend of what is necessary, what is fair, and what is workable." *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) (footnote omitted). Accordingly, within 15 days of the date of this order, the defendants are ordered to take the following steps to properly implement the prior orders of this Court:

- (1) With respect to *inactive* cases involving persons who applied for AFDC benefits after December 1, 1971, the defendants shall assign at least four full-time office workers, in addition to any presently so assigned, to review Department records in order to determine whether such former recipients are currently eligible for retroactive welfare payments and to provide for the payment of such retroactive benefits. The defendant Commissioner shall submit monthly reports to this Court, with copies to counsel for the plaintiffs, specifying the number of such inactive cases which were reviewed by Department personnel during the prior 30 days in efforts to determine eligibility for retroactive payments, the number of persons who were found to be eligible for retroactive payments, and the number of such persons

who were paid retroactive payments by the Department during the prior 30 days.

(2) With respect to *active* cases involving persons who applied for AFDC benefits after December 1, 1971, the defendants shall immediately institute procedures by which Department records may be reviewed in order to determine whether such current recipients are eligible for retroactive welfare payments and shall provide for the payment of such retroactive benefits. Since these records are computerized, it is anticipated that the information may be readily obtained and the payments speedily made. Accordingly, the defendant Commissioner shall submit a report to this Court within 45 days of the date of this order, and shall submit a copy of such report to counsel for the plaintiffs, specifying the number of such active cases which were reviewed by the Department, the number of persons who were found to be eligible for retroactive payments, and the number of such persons who were paid retroactive payments by the Department.

(3) The defendant Commissioner shall issue a new directive to all Department personnel, with copies to counsel for plaintiffs, regarding retroactive payments and processing of AFDC applications. The directive shall state the following:

(a) Determinations of eligibility of AFDC applicants shall be made within 30 days from the date of application for assistance. This 30-day period is to be measured from the date of application for assistance, whether such application was made by telephone or in person in a Welfare Department office. It is *not* sufficient that applications are approved by district supervisors within 30 days: processing of applications is to be completed at district offices in time so that applications may be for-

warded for final approval and checks may be mailed within 30 days.

(b) If no determination of eligibility is made within 30 days, applicants are to be presumed eligible for assistance and AFDC checks are to be mailed accordingly, *i.e.*, at the end of the 30-day period. Assistance is to be effective from the date of initial application for assistance, whatever the date of determination of eligibility, and regardless of whether the initial application was by telephone or in person. For recipients who received emergency town assistance during the pendency of their AFDC applications, AFDC benefits retroactive to the date of application are to be paid only to the extent that such AFDC benefits exceed the amount of emergency town assistance benefits paid.

(c) The Department directives of May 4, 1973, and December 4, 1973 are hereby rescinded insofar as they place a burden upon a welfare recipient to demonstrate "unmet need" in order to receive retroactive AFDC payments or impose a specific dollar limitation on the amount of such retroactive payments. In no case shall any employee of the Department require proof of "unmet need" for an AFDC recipient before authorizing retroactive payments, whether or not the recipient received emergency town assistance during the pendency of the recipient's AFDC application, and regardless of the amount of such retroactive payments.

In addition, the defendant Commissioner shall submit monthly reports to this Court, with copies to counsel for the plaintiffs, detailing the processing of AFDC applications. The first such report shall be submitted not later than May 10, 1974, covering the month of April 1974, and the defendant Commissioner shall continue to submit such reports monthly until further order of this Court. Such reports shall include

the following information for each district office and for the state as a whole:

a. The number of applications brought forward from preceding months, the number received during the month and the total of the two, *i.e.*, the number on hand during the month;

b. The number of applications approved during the month, the number denied, the number transferred out and the total number of dispositions during the month;

c. The percent of applications disposed of within the time period (30 days);

d. The number of applications pending less than 30 days at the end of the month, the number pending 30 through 45 days, the number pending 45 through 60 days, the number pending more than 60 days, and the total of the four, *i.e.*, the total number of applications pending at the end of the month;

e. The number and percent of applications presumed eligible after failure to process in less than 30 days during the month; and

f. The number and percent of applications pending over 30 days due to failure of the applicant or the applicant's physician to submit the information required to establish eligibility during the month.

Plaintiffs' counsel have expended considerable effort in this case in presenting the legal issues and relevant evidence to this Court. They have diligently sought to protect the rights of their clients in the face of unjustified non-compliance with this Court's prior orders on the part of the defendants. The Court finds that the value of the time necessarily expended by

the attorneys for the plaintiffs is in excess of \$1,000. Accordingly, within 15 days from the date of this order, the defendant Norton shall, as Commissioner of Welfare for the State of Connecticut, and in his individual capacity, pay costs, and attorneys' fees for the prosecution of this motion in the amount of \$1,000 to Fairfield County Legal Services, Inc., and Tolland-Windham Legal Assistance Program, Inc., plaintiffs' attorneys, such amount to be divided equally between the two legal services programs. *Doe v. Weaver*, No. 70-C-3084 (N.D. Ill., October 11, 1972, December 14, 1972); *Sprague v. Ticonic Bank*, 307 U.S. 161, 164-166 (1939); *Hall v. Coie*, 412 U.S. 1, 4-5 (1973). Cf. *Stanford Daily v. Zurcher*, 366 F.Supp. 18 (N.D. Calif. 1973); *Almenares v. Lavine*, 71 Civ. 3503 (S.D. N.Y. Nov. 29, 1973), C.C.H. Pov.L.Rptr. ¶ 18,317.

SO ORDERED.

Dated at Hartford, Connecticut, this 22nd day of March, 1974.

M. JOSEPH BLUMENFELD
Chief Judge

